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SIPDIS

ENERGY FOR CDAY, DPUMPHREY, AND ALOCKWOOD

E.O. 12958: N/A

TAGS: [EPET](#) [ENRG](#) [EINV](#) [VE](#)

SUBJECT: NEW FX REGULATION FOR THE HYDROCARBON SECTOR

[11](#). SUMMARY: A new foreign exchange regulation states all foreign currency derived from oil and gas exports must be sold to the Venezuelan Central Bank (BCV). However, PDVSA must only sell to the BCV the amount of foreign currency equal to its domestic operating expenses and tax obligations in Venezuela. PDVSA contractors may be paid directly in USD but only for the foreign component of goods and services provided to PDVSA. Associations and joint venture companies may keep foreign currency required for payments to be made outside Venezuela. END SUMMARY

PDVSA

[12](#). The GOV published Exchange Agreement Number 9 (Agreement 9) in the Official Gazette on November 21. The new regulation covers companies carrying out activities under the Organic Hydrocarbons Law and the Organic Gas Law. Although the regulation states that all foreign currency derived from oil and gas exports must be sold to the BCV, it specifically allows PDVSA to maintain offshore any foreign currency that it needs to carry out its activities. PDVSA is obligated to sell to the BCV the amount of FX necessary to pay its domestic operating expenses and its tax obligations. Any excess foreign currency that PDVSA holds above the amount needed to cover its operating expenses denominated in foreign currency and the obligatory sales to the BCV must be transferred to a special public investment fund. Article 2 of Agreement 9 states PDVSA and its affiliates may retain their rotating fund to pay obligations denominated in foreign currency.

[13](#). PDVSA and its affiliates are permitted to pay contractors directly in USD but only for the foreign component of goods and services. The goods and services can not be produced in Venezuela, must be necessary to PDVSA or its affiliates' activities, and the property or use must be transferred to PDVSA or its affiliates. Maintenance is also included in this exception provided it requires technology or knowledge that is not available in Venezuela. The local component of goods and services must be paid for in Bolivars. The Foreign Exchange Administration Commission (CADIVI) will issue new regulations for the repatriation of the Bolivars received for the local component of goods and services.

ASSOCIATIONS AND JOINT VENTURE COMPANIES

[14](#). Entities operating under association agreements as well as joint venture companies may maintain offshore bank accounts denominated in foreign currency in order to make payments outside of Venezuela. Any remaining foreign currency that is held after the payments are made must be sold to the BCV. Entities operating under association agreements and joint ventures will not have access to official foreign currency from the BCV. (NOTE: We believe they will still have access to currency via CADIVI. End NOTE).

[15](#). COMMENT: It is not clear where companies operating under Operating Service Agreements fall under Agreement 9. One prominent law firm has argued that they fall under the contractor provisions of the new regulation. Another firm did not hazard a guess on whether they would be treated as contractors but did note that they clearly did not fall under the provisions for association agreements and joint venture companies. END COMMENT.
Whitaker